

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The) Case No. 12-426-EL-SSO
Dayton Power and Light Company for)
Approval of its Market Rate Offer.)

In the Matter of the Application of The) Case No. 12-427-EL-ATA
Dayton Power and Light Company for)
Approval of Revised Tariffs.)

In the Matter of the Application of The) Case No. 12-428-EL-AAM
Dayton Power and Light Company for)
Approval of Certain Accounting)
Authority.)

In the Matter of the Application of The) Case No. 12-429-EL-WVR
Dayton Power and Light Company for)
Waiver of Certain Commission Rules.)

In the Matter of the Application of The) Case No. 12-672-EL-RDR
Dayton Power and Light Company to)
Establish Tariff Riders.)

**MOTION FOR PROTECTIVE ORDER
BY
THE FEDERAL EXECUTIVE AGENCIES**

The Federal Executive Agencies ("FEA") hereby moves the Public Utilities Commission of Ohio ("PUCO") for a protective order regarding information asserted to be confidential by the Dayton Power and Light Company ("DP&L").¹ As part of discovery in this proceeding, DP&L provided information to FEA, subject to a protective agreement, and DP&L asserts that this information constitutes trade secret information under Ohio law.

¹ This Motion is filed pursuant to Ohio Adm. Code 4901-1-02(E), 4901-1-12 and 4901-1-24(D).

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FEA hereby requests that, in accordance with Ohio Adm. Code. 4901-1-02(E), the PUCO issue such order as is necessary to protect the undisclosed (redacted) portions of the Confidential Direct Testimony of Michael P. Gorman and his Confidential Exhibit MPG-1 that DP&L asserts to be confidential. Subject to FEA's rights under the protective agreement, FEA is filing the Confidential Direct Testimony of Michael P. Gorman and his Confidential Exhibit MPG-1 under seal, and is also filing a public version that shows all information DP&L does not claim to be confidential.

By filing the instant Motion, FEA does not concede that the information constitutes trade secret information. However, FEA acknowledges that it has obtained this information pursuant to a protective agreement with DP&L that provides for such information to be treated as confidential and protected (subject to FEA's right under the protective agreement to initiate a process for the PUCO to rule whether the information deserves confidential treatment under Ohio law).

The grounds for this Motion are more fully described in the accompanying Memorandum in Support.

Respectfully submitted,

CHRIS THOMPSON
FEDERAL EXECUTIVE AGENCIES

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MEMORANDUM IN SUPPORT

FEA files this Motion for Protective Order ("Motion") contemporaneously with the filing of the Confidential Direct Testimony of Michael P. Gorman and his Confidential Exhibit MPG-1. In filing this Motion, FEA does not concede that the information in the Confidential Direct Testimony of Michael P. Gorman and his Confidential Exhibit MPG-1 is trade secret information pursuant to R.C. 1333.61(D) and does not concede that the information is deserving of protection from public revelation under Ohio Adm. Code 4901-1-24(D).

FEA understands that DP&L considers the undisclosed (redacted) information to be confidential and deserving of the protection of trade secret information as defined in R.C. 1333.61(D). FEA's understanding is based on claims by DP&L that the information

(1) derives economic value, actual or potential, from not being known to, and not being readily ascertainable by proper means by others, and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.² Under the assertions made by DP&L, at this time, confidential treatment of the redacted information in the Confidential Direct Testimony of Michael P. Gorman and his Confidential Exhibit MPG-1 would be appropriate, subject to FEA's rights under its protective agreement with DP&L to initiate a process to determine whether the information should be protected.

In addition, FEA is filing a public version of the Confidential Direct Testimony of Michael P. Gorman and his Confidential Exhibit MPG-1 so that all information DP&L does not claim to be confidential is accessible for the public's review. The public version does not contain information that was asserted by DP&L to be confidential.

For the foregoing reasons and subject to the foregoing reservations of rights, this Motion should be granted at this time.

² See R.C. 1333.61(D).

Respectfully submitted,

CHRIS THOMPSON
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion for Protective Order* by the Federal Executive Agencies has been served upon those persons listed below via electronic mail this 1st day of March, 2013.

/s/ Chris Thompson
Ohio Pro Hac Vice
Attorney for FEA

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